

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2481 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
M H BAROT

Versus

STATE OF GUJARAT

-----  
Appearance:

None present for Petitioner  
MR SP HASURKAR for Respondent No. 1, 2

-----  
CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/08/1999

ORAL JUDGEMENT

#. Perused the Special Civil Application and heard learned counsel for the respondents.

#. The petitioner, ex-Superintendent and Principal of Akhandanad Ayurved Hospital, Ahmedabad retired from the service on 28/2/1998. As per his case, he was made to retire subject to Rule 189A of Bombay Civil Services

Rules, 1959 (herein after referred to as "The Rules, 1959").

#. It is the grievance of the petitioner that Rule 189A of the Rules, 1959 is not applicable in his case as no departmental inquiry was pending or contemplated against him on the date of his retirement. It is further say of the petitioner that the respondents under the order dated 2/12/1998 conveyed that no departmental inquiry is pending against the petitioner and the order to retire the petitioner subject to Rule 189A of the Rules has been cancelled.

#. The petitioner complains that from the amount of the gratuity payable to him, an amount of Rs.29,837/- has been withheld or deducted on the ground that he was retired subject to Rule 189A of the Rules, which could not have been done as this rule is not applicable to his case. More so after the order dated 2/12/1998 of the respondent, the amount withheld from his gratuity amount should have been paid to him with interest.

#. The reply to this Special Civil Application has been filed by the respondents. From the reply, I find that the respondents have admitted that the amount of Rs.15,000/- has been withheld and not Rs.29,873/- as what is claimed by the petitioner. It is stated that this amount of Rs.15,000/- was withheld as per the Rules. The calculation of the amounts, which were payable to the petitioner has also been given out in the reply. It is stated in the reply that Rs.15,000/- is withheld as per the prevailing rules and same will be paid to the petitioner at the time of finalization of his D.C.R.G. The claim of the petitioner for interest has also been disputed.

#. The petitioner has not filed rejoinder to the reply filed by the respondents. Whatever the averments made by the respondents in the reply stand uncontroverted and to be taken to be correct.

#. The respondents are not disputing that Rs.15,000/has been withheld from the amount of retiral benefits payable to the petitioner. The respondents have also not disputed the fact that the order under which the petitioner was retired subject to Rule 189A of the Rules, 1959 has subsequently been cancelled. It is not the case of the respondents that any departmental inquiry was pending against the petitioner on the date of his retirement and/or it was in contemplation. It is also not the case of the respondents that any criminal case

was/is pending against the petitioner. From the reply, I find that the justification, which has been given by the respondents to withhold Rs.15,000/- of the petitioner is wholly arbitrary, unjustified and perverse. The Rule 189A of the Rules, 1939 is not applicable to the case of the petitioner. Moreover, that order, which has been passed earlier to retire the petitioner subject to aforesaid rule has been withdrawn and immediately thereafter respondents should have paid this amount to the petitioner.

#. The claim of the petitioner for refund of Rs.29,873/is not correct but as what the respondents have admitted the petitioner is entitled for Rs.15,000/- only. It is a case where the respondents have arbitrarily and without there being any legal justification whatsoever have withhold the amount of Rs.15,000/- of the petitioner and the petitioner has suffered loss of interest thereon for this loss which is caused to the petitioner because of the arbitrary and perverse action of the respondents has to be compensated by them.

#. In the result, this Special Civil Application succeeds in part and the respondents are directed to pay Rs.15,000/- to the petitioner together with the interest thereon @15% p.a. from 1/3/1998 till the payment thereof. The respondents are directed to pay Rs.15,000/- with interest as aforesated within a period of one month from the date of the receipt of the writ of this order. The respondent No.1 is directed to pay Rs.1,000/- as costs of the petition to the petitioner. This amount of costs has to be paid along with the amounts aforesaid to the petitioner only.

The Rule is made absolute in the aforesaid term.

(S.K.Keshote, J.)

\*Pvv